

Clerk of the Board**California Air Resources Board**

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IETA COMMENTS ON CALIFORNIA AIR RESOURCES BOARD'S PROPOSED 15-DAY MODIFICATIONS TO CALIFORNIA'S CAP-AND-TRADE REGULATION AND COMPLIANCE PROTOCOLS

On behalf of the [International Emissions Trading Association](#) (IETA)¹, we appreciate this opportunity to provide comments on the California Air Resources Board (ARB)'s [proposed 15-Day amendments](#) to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and offset compliance protocols, published on 20 May 2015². We also appreciate the significant time and effort that ARB Staff have dedicated to the protocol amendment process, and therefore hope that our observations and recommendations will be considered in a positive and constructive light.

IETA's comments focus specifically on proposed revisions found in ARB's 15-day [notification](#), which relate to: the Compliance Offset Protocol Rice Cultivation Projects ([Attachment 3](#)); and Compliance Offset Protocol US Forest Projects ([Attachment 4](#)).

1. COMPLIANCE OFFSET PROTOCOL RICE CULTIVATION PROJECTS

ARB's Compliance Offset Protocol for Rice Cultivation Offset Projects ("**Rice Protocol**") provide important precedents for future California agricultural offset protocols, such as the Nutrient Management Protocol³. IETA generally supports the progress and noticeable clarifications made to the current Rice Protocol, and we applaud the cooperative spirit in which ARB Staff have worked with a broad range of stakeholders on its development and refinement.

While we look forward to seeing the Rice Protocol's adoption as soon as possible, we also encourage Staff to explore **future opportunities for additional modifications in order to heighten the Protocol's workability, scalability and economic viability**. Priority considerations for future Rice Protocol improvements are summarized below.

Expand Eligible Project Activities: IETA welcomes the inclusion of dry seeding, early drainage, and alternative wet/dry cultivation practices as eligible project activities. However, looking ahead, we **encourage ARB to also include post-harvest rice straw and residue removal (i.e., "baling") as an eligible project activity in the Rice Protocol**. Post-harvest rice straw removal inherently

¹ IETA is an international business association representing over 140 leading international companies from across the carbon value chain. IETA has extensive experience with greenhouse gas market-based trading programs worldwide, including compliance allowance and offset programs. www.ieta.org

² Board's adoption of [Resolution 14-31](#)² directed ARB Staff to "consider additional modifications to the proposed amendments to the Cap-and-Trade Regulation as part of a subsequent 15-Day rulemaking package".

³ The Rice Protocol has established a framework that can enable the creation of a Nutrient Management Protocol. In 2014, EDF conservatively estimates a Nutrient Management Protocol could generate 25 MMT by 2030.

eliminates potent methane emissions from the cultivation process by removing biomass from rice fields prior to flooding during the start of the next cultivation cycle. Baling is among the largest opportunities for greenhouse reductions from the rice sector precisely because it removes the underlying source of methane emissions in the first place. Monetizing eligible reductions from baling practices would also curb water demand – and associated carbon emissions – from water usage at a time when California’s undergoing historical drought conditions.

Project Verification: In the current Rice Protocol, ARB requires individual verification statements for every Offset Project Operator (OPO) within a consolidated Offset Project Data Report (OPDR) submitted by a single Authorized Project Designee (APD). **We believe this requirement should be changed to require audits of all OPO data, as collected, managed and stored by APDs, but only site visits on a scientifically identified sample of farms or fields within a collective project**⁴. If audits reveal errors or indicate problems that may be systemic, a more in-depth verification could be required.

Pilot Verification Program: IETA supports cost-effective yet rigorous approaches to verification, while recognizing that verification can lead to the single largest and most resource-intensive cost of developing agriculture protocols. We supported ARB Staff’s prior inclusion of a Pilot Verification Program for the Rice Protocol. However, in the protocol’s latest draft version, this proposed Pilot has unfortunately been removed. **We therefore recommend re-inclusion of the Pilot Verification Program in the Rice Protocol**, prior to protocol adoption. The Pilot – funded by ARB and employing two approaches for a 3-year period - would allow for a comparative assessment of the outcomes of the two verification approaches. Such a comparative analysis, if well designed, will be a valuable and worthwhile initiative, as well as provide foundational information on which to base the development of future updates to the Rice Protocol and the development of additional agricultural protocols into California’s Program.

Project Data Disclosure: As currently written, the Rice Protocol’s full project data disclosure requirement may divulge proprietary or confidential business information. Like most business entities, agricultural producers must protect proprietary and confidential business information from public disclosure. While some of the information collected from individual producers participating in a consolidated Rice Protocol project might be necessary to include in private reports to ARB, the requirement for such data to be made publicly available will lessen or negate the willingness and ability of rice producers to participate. As such, **we recommend ARB clearly states that “any proprietary and confidential business information will not be publicly shared at any point”**.

2. COMPLIANCE OFFSET PROTOCOL US FOREST PROJECTS

IETA has major concerns associated with ARB’s proposed amendments to California’s Compliance Offset Protocol for US Forest Projects (“**Forest Protocol**”). We fear that, if adopted, many of ARB’s proposed Forest Protocol revisions could adversely affect California’s still nascent offset market – shaking confidence, particularly that of landowners, and lowering participation that will reduce future volumes to an already constrained market.

⁴ See C-AGG’s proposed approach recognizing that project verifiers already develop Sampling Plans in a transparent and documented manner - the proposed approach relies on the rigor of science to reduce verification costs without sacrificing program integrity.

We recognize that protocol updates are both desirable and necessary as California's offset program matures and forest conditions change. However, we believe that major protocol modifications – particularly at this stage of the program's infancy – are both risky and unnecessary. As such, **IETA requests ARB to strongly consider maintaining the current version of its compliance Forest Protocol**, while allowing for the incorporation of eligible Alaskan forest projects into California's program.

Stakeholder Process Concerns

IETA is concerned about the method by which ARB proceeded with proposed modifications to the Forest Protocol. We believe the protocol modification process was neither transparent nor consistent with ARB's typically high standard of stakeholder communications and engagement.

During the Forest Protocol updating process, ARB only hosted one stakeholder workshop to briefly discuss proposed amendments to the Forest Protocol (among a host of other protocol and program design matters). As a result, many of the protocol's latest proposed amendments are considered problematic and impractical, particularly for forest owners outside of California. This situation could have been avoided, if a large and diverse collection of experts and stakeholders had been consulted earlier by ARB.

To remedy the situation and address process problems, we **recommend that ARB pursue a Forest Protocol engagement approach similar to that used for the Rice Protocol**. This approach would see ARB gather a broad range of forestry, market, industry, NGO and technical experts to share focused communications and protocol options/impact views with ARB staff. The transparent, multi-sector process would occur along a clear and established timetable.

Going forward, we believe that **all protocol updates**, including those linked to Forest Protocol revisions, should be carried-out in accordance with clear and well-circulated timetables, and they should involve a rigorous process of stakeholder consultation.

Modified Method for Determining MBL for IFM Projects

We are concerned that ARB's new proposed method for determining minimum baseline level (MBL) for Improved Forest Management (IFM) projects with initial carbon stocking (ICS) above common practice (CP) will run counter to building a robust and functional offsets market in California.

ARB's proposed approach for determining MBL for IFM discourages landowners from establishing forest projects on their most stocked/harvested acres because it does not provide full credit for the carbon sequestered in these areas. In addition, the rule change proves impractical for implementation and becomes difficult to effectively verify due to increased inventory and monitoring requirements.

In light of the above, **IETA recommends that ARB's previous Forest Protocol's method of establishing MBL for IFM projects with ICS above CP should be maintained and included in the revised updated protocol.**



Common Practice Values Update for Private IFM Projects

In the new protocol, ARB's proposed new CP values do not accurately reflect forest stocking resultant from truly "common practice" forest management because they do not account for the cyclical components of the timber market contributing to high/low demand fluctuations and forest stocks⁵.

Setting CP values based on forest stocking levels based on abbreviated time periods will lead to less than optimal forest carbon sequestration and reduced climate benefits. When baselines are set artificially high based on periodic downward market fluctuations and demand for timber surges, there will be even less incentive for landowners to implement carbon projects, leading to the harvesting of forests rather than seeing them stand for 100+ years.

To better represent "common practice" forest stocking resulting from BAU forest practices, **IETA recommends that CP values are based on average stocking levels over an extended time horizon.** For instance, stocking averaged over a time period of up to 25 years (i.e. the same length as a project crediting period) would account for timber market fluctuations and avoid discouraging projects during periods when motivation to harvest is highest.

Once the method for calculating CP values is agreed-upon, **IETA urges ARB to establish a set and transparent process – including a timetable for the release, public review, and eventual implementation of proposed changes – to guide the regular update of these CP values.**

Specific Protocol Concerns & Recommendations

Verification Approach to Harvest & Buffer Size: In the 15-day update, ARB's revised Forest Protocol now features several vague and problematic areas related to the verification of harvest and buffer size for even-aged management retention stocking standards⁶. For instance, the new procedure will increase the cost and time requirements for site verifications. The **proposed approach excludes how many harvests must be examined** in order to confirm that harvest size and buffer requirements have been met across the project. This will force verifiers to unnecessarily examine a potentially excessive number of harvested stands. Another example is that the new procedure contains **unclear language about how the area of separation between harvests is to be calculated**, and how to assess the basal area requirement during full verifications. The lack of clarity and guidance will naturally lead to confusion, inefficiencies and higher costs/resource requirements borne by all parties – including project proponents, verifiers, and ARB Staff.

Public Lands Definition (Chapter 1.2 Definitions): Under the current Forest Protocol, the definition of "public lands" is too broad. Avoided Conversion (AC) and IFM baseline requirements for public lands fail to take into account wide variation in management options open to independent agencies or authorities. They also establish baselines in a way that makes additional and environmentally valuable projects infeasible. To resolve this problem, **IETA recommends that ARB restrict the definition of "public lands" so that independent agencies or authorities are categorized as private**, given that these entities see similar budgetary pressures and management

⁵ Updated CP values are based exclusively on FIA data collected over 2007-2012 – a short period of time and in the wake of the recession, when housing and associated timber demand were at historic lows. Capturing CP values during this time is an unrepresentative collection of high stocking levels for assessment areas across the country.

⁶ Updated Forest Protocol - Chapters 3.1 (4) (A-E) and 8.1 (E))

options as private owners. For any truly public agency, IFM baselines should be established based on common practice carbon stocks on other public forests in the assessment area based on FIA data (i.e. same approach taken for IFM projects).

Countable Trees Definition (Chapter 1.2 Definitions): “Countable Trees” are currently defined as “trees that must be in place at least two growing seasons and must be live and healthy”. Although these “countable trees” must be measured, no clear definition exists about what constitutes a “healthy” tree. The ambiguity could result in verification problems when determining which trees are acceptable to be counted. **IETA recommends that a clear definition for the word “healthy” be included as to avoid verification problems when determining which trees are acceptable to be counted.**

Forest Owner Definition (Former Section 2.2 Forest Owners): The current “Forest Owner” definition is ambiguous and leads to differing interpretations by ARB, Project Proponents, and verifiers. This will ultimately lead to inconsistency in its application. **We recommend the Protocol definition of “Forest Owner” be modified to include only those entities that have an interest in the real property within the project area and have current control over the Project.**

Eligibility Activities (Chapter 2): The current Forest Protocol does not contain a clear methodology for adjusting project boundaries after initial verification. Forest owners, particularly large owners, periodically have their property boundaries re-surveyed, which often leads to minor shifts in boundary locations and total acreage. **We therefore recommend the Protocol allow for updates to project boundaries.**

Project Life & Minimum Time Requirement (Chapter 3.5.1): Under the updated Forest Protocol, a new owner of any part of the forestry project must agree to take over the project responsibilities and commitments. This approach unreasonably and unfairly restricts the ability of a landowner to sell any or all of the land in a project for a least 100 years, thereby limiting the number of projects that participate in California’s program. **We recommend that Forest Owners be allowed to sell, or otherwise transfer, a portion of the Project Area from the Project, without obligating the new owner to the 100 year commitment** (or what remains of it) provided that the OPO or APD undertakes an additional verification prior to the sale.

Regulatory Compliance & Project Activity (Chapter 3.8): Under the Forest Protocol, compliance with legal provisions depend on ambiguous, inconsistent and overly broad definitions of offset project activities and violations as they potentially apply to activities that are unrelated to the Forest Project. The ambiguity of regulatory and protocol compliance language makes it extremely difficult for market participants to establish the probability and magnitude of risks related to compliance with legal requirements. If offsets – forestry and beyond – are to continue to play an important cost-containment role in California’s cap and trade program, it is **critical that more specific language and clear boundaries on regulatory compliance and offset project activities be provided.**

Violations (Chapter 3.8 Regulatory Compliance): The protocol language is also unclear regarding what constitutes a violation. Like all compliance protocols, IETA believes it is vital for ARB to ensure that violations unrelated to actual offset project activities will not be grounds for invalidation. Future protocol language should **clarify that only fully adjudicated violations**, which directly affect the number of credits issued from a project, give rise to potential invalidation. **We recommend that only a confirmed formal violation notice should trigger an invalidation investigation.**

Reporting Period (Chapter 3.8 Regulatory Compliance): The protocol states that credits from an entire reporting period are not eligible for issuance, if the offset project was out of compliance during the reporting period. For many offset project types with typical reporting periods spanning long time horizons, it is inappropriate to penalize an entire reporting period for a violation that may have been incurred and rectified within a matter of days. We therefore ask ARB to provide **clarification specifying that only credits arising during the period of an actual violation could potentially be subject to invalidation** rather than all credits arising during the entire Reporting Period.

In Conclusion

IETA appreciates the opportunity to record our comments related to the 15-day proposed modifications to ARB's Rice and Forest Protocols. IETA remains committed to supporting the design and growth of a fully-functional, linkable California carbon market to help achieve the goals of AB32 in a robust and economically-efficient manner.

If you have any questions, or further clarification is required, please do not hesitate to contact IETA's North America Director, Katie Sullivan, at sullivan@ieta.org.

Sincerely,



Dirk Forrister
IETA President and CEO